

TENNESSEE STATE CONFERENCE)
OF THE NAACP, *et al.*,)
)
Plaintiffs,)
)
v.)
)
TRE HARGETT, in his official capacity as)
Secretary of State of Tennessee, *et al.*,)
)
Defendants.)

No. 3:26-cv-00638
THREE-JUDGE COURT

Case 3:26-cv-00638 Document 64 Filed 08/24/26 Page 1 of 16 PageID #: 888

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
SUPPLEMENTAL BRIEF	1
I. The <i>Sherman</i> and <i>NAACP</i> Plaintiffs’ Vote-Dilution Claims Are Identical.....	1
II. <i>Sherman</i> Concluded Plaintiffs Were Unlikely to Succeed on the Merits of Their Vote-Dilution Claim.	4
III. This Court Should Conclude <i>NAACP</i> Plaintiffs Cannot Plausibly Allege Vote-Dilution Based on the Same Set of Facts.	5
A. If districts are “readily explainable” by politics, Plaintiffs have not plausibly alleged discrimination.	5
B. <i>Sherman</i> refutes Plaintiffs’ argument that they need not rule out the readily apparent political explanation for districts.	10
CERTIFICATE OF SERVICE	13

TABLE OF AUTHORITIES

Cases

<i>Abbott v. LULAC</i> , 146 S. Ct. 418 (2025).....	11
<i>Abbott v. Perez</i> , 585 U.S. 579 (2018).....	9
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	5, 6, 10
<i>Houchens v. Beshear</i> , 2020 WL 3086603 (E.D. Ky. June 10, 2020).....	1
<i>Louisiana v. Callais</i> , 146 S. Ct. 1131 (2026).....	2, 4, 5
<i>Tenn. State Conf. of NAACP v. Lee</i> , 746 F. Supp. 3d 473 (M.D. Tenn. 2024)	1, 5, 8, 9, 10, 11, 12
<i>Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.</i> , 429 U.S. 252 (1977).....	3

Other Authorities

Order, <i>Sherman v. Hargett</i> , No. 3:26-cv-00616, Dkt. 62 (July 23, 2026)	1, 4-11
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SUPPLEMENTAL BRIEF

This Court already concluded that Tennessee’s redrawn congressional districts are “readily explainable” by an open and obvious political goal: to send an all-Republican congressional delegation to Washington. Order at 5, *Sherman v. Hargett*, No. 3:26-cv-00616, Dkt. 62 (July 23, 2026) (“*Sherman Op.*”). That political explanation for the 2026 Plan led the Court to deny the *Sherman* Plaintiffs’ preliminary injunction motion. *Id.* It likewise should lead the Court to grant the pending motion to dismiss the *NAACP* Plaintiffs’ same challenge to the 2026 Plan. Because districts “‘have an obvious alternative explanation’ that would establish no wrongdoing,” Plaintiffs fail to plausibly allege discrimination. *Tenn. State Conf. of NAACP v. Lee*, 746 F. Supp. 3d 473, 482 (M.D. Tenn. 2024) (three-judge court) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 567 (2007)); see also, e.g., *Houchens v. Beshear*, 2020 WL 3086603, at *1 (E.D. Ky. June 10, 2020) (observing that if a “pending motio[n] to dismiss” is “based on the same arguments and facts” as a failed preliminary injunction motion, the court should dismiss for the same reasons).

I. The *Sherman* and *NAACP* Plaintiffs’ Vote-Dilution Claims Are Identical.

The *Sherman* and *NAACP* Plaintiffs advance the same legal theory. Compare *Sherman* Dkt. 1 ¶¶1-3, 100-09, with *NAACP* Dkt. 30 (“FAC”) ¶¶1-23, 188-201. Both sets of Plaintiffs claim the State’s redrawn congressional districts are the product of unconstitutional racial discrimination. FAC ¶¶25, 188-201; accord *Sherman* Dkt. 1 ¶¶2, 100-09. They allege that the State redrew its congressional districts to “disenfranchis[e]

Black voters” in what was Memphis-based CD-9. FAC ¶23; *accord Sherman* Dkt. 1 ¶1. They assert that the Legislature, splitting CD-9 into three districts, acted with “discriminatory purpose” given legislators’ “full awareness” of “the undeniable racially discriminatory effect” of that change. FAC ¶¶196-99; *accord Sherman* Dkt. 1 ¶107.

That remarkable retelling of Tennessee’s politically motivated mid-decade redistricting rests on virtually identical factual allegations by both sets of Plaintiffs. To start, they concede the Legislature’s stated goal was political, not racial, but then insist politics was “merely pretext.” FAC ¶¶156-57; *see id.* ¶¶20, 75, 114; *accord Sherman* Dkt. 1 ¶¶48, 50, 60, 63-64.

In the face of that obvious political explanation, both sets of Plaintiffs contend that Tennessee’s decision to redistrict on the heels of *Louisiana v. Callais*, 146 S. Ct. 1131 (2026), is evidence of unconstitutional racial purpose. *See* FAC ¶¶5, 73-78; *Sherman* Dkt. 20 (“*Sherman* PI Mot.”) at 7-8, 11 (“The invocation of *Callais* gives away the game.”); NAACP MTD Resp. at 15 (“hasty destruction of the state’s only majority-Black congressional district mere days after *Callais* evinces racial motivation”). Both sets of Plaintiffs fault legislators for their *refusal* to engage in floor colloquies about racial demographics after *Callais*. *See* FAC ¶¶104, 161-64 (“unreasonable to believe that the General Assembly somehow developed collective amnesia as to the history behind the make up of District 9”); *Sherman* PI Mot. at 12 (sponsor “would not acknowledge that Memphis was a majority-Black city and risibly claimed not to know Congressional District 9 was

majority-Black”). And both sets of Plaintiffs say the use of census data to redistrict is an “admissio[n]” to “using racial data to determine where and how to crack Shelby County and Memphis.” *Sherman* PI Mot. at 12; *NAACP* MTD Resp. at 18 (“the 2026 plan was drawn using only Census data, which includes population and racial demographic data but no ‘partisan scores or partisan data’”); FAC ¶¶20, 96, 111, 113-16, 158, 160.

Finally, both sets of Plaintiffs lodge nearly identical allegations purporting to track the *Arlington Heights* factors. See *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977). They assert that Tennessee has a “long history of discrimination and animus toward Black voters, particularly Black Memphians.” *Sherman* PI Mot. at 8; *NAACP* MTD Resp. at 1, 4, 14 (same); FAC ¶¶176-87. They assert discrimination continues today, in the form of legislative efforts to improve Memphis’s public schools, *Sherman* PI Mot. at 8; *NAACP* MTD Resp. at 4; FAC ¶¶173, 187, and the Shelby County District Attorney’s office, *Sherman* PI Mot. at 8; *NAACP* MTD Resp. at 14, FAC ¶174, and other non-redistricting legislation, *Sherman* PI Mot. at 8; *NAACP* MTD Resp. at 14; FAC ¶¶22, 168, 170-71, 180, 185-86. As for the 2026 Plan, they contend a legislator’s statement that the new map might make Memphis “safer” was a racially motivated “dog whistle” perpetuating “stereotypes of Black criminality.” *Sherman* PI Mot. at 12; *NAACP* MTD Resp. at 17-18 (same), FAC ¶97. And they assert that the redrawn districts had a disproportionate impact on black Tennesseans. *Sherman* PI Mot. at 6 (asserting “severe disparate impact on Black voters in Memphis and Shelby County”); *NAACP* MTD Resp.

at 10 (redistricting “exclusively target[ed] Shelby county—the County where the vast majority of Black Tennesseans live”); FAC ¶¶1, 71, 141, 145, 149, 153-54. Because that impact was a “foreseeable consequenc[e],” the argument goes, the Legislature should be “presumed to [have] intend[ed]” it. FAC ¶¶11, 14, 21, 150, 199; *Sherman* PI Mot. at 7.

II. *Sherman* Concluded Plaintiffs Were Unlikely to Succeed on the Merits of Their Vote-Dilution Claim.

In *Sherman*, this Court distilled the legal standard for a vote-dilution claim. Plaintiffs must show “racial discrimination was a ‘substantial’ or ‘motivating’ factor behind the new map.” *Sherman* Op. at 4 (quoting *Hunter v. Underwood*, 471 U.S. 222, 228 (1985)). “[I]f either politics or race could explain a district’s contours,” the Court explained, “Plaintiffs lose.” *Id.* at 6 (quoting *Callais*, 146 S. Ct. at 1157). Along the way, the Court clarified that redistricting after *Callais* “doesn’t show” the Legislature was “motivated by race or racial animus.” *Id.* at 9 n.4. Just the opposite—the Legislature understood *Callais* to allow legislators to “safely carry out their political goals without having to worry about race or racial balancing” and “avoid considering race” at all. *Id.* And the Court clarified that legislators’ choice to say “nothing about race during the entire redistricting process ... isn’t evidence of racial animus.” *Id.* at 8 n.3. *Id.*

Applied to assertions of discrimination in *Sherman*, this Court found Plaintiffs were not likely to succeed on the merits of their discrimination claim. Districts “are readily explainable by political motivations.” *Id.* at 5. “[S]tatements and votes of a handful of legislators on unrelated topics do not plausibly suggest that the whole

legislature passed the legislative maps to discriminate against racial minorities,” especially when those statements come from individuals no longer serving in the Legislature. *Id.* at 9 & n.5 (quoting *Lee*, 746 F. Supp. 3d at 506). Plaintiffs failed to “overcome [the] presumption of legislative good faith because they [had not] shown that the legislature acted ‘because of’ the map’s racial effects.” *Id.* at 10. Allegations explained by “partisan politics” were not enough. *Id.* at 10 n.6.

III. This Court Should Conclude NAACP Plaintiffs Cannot Plausibly Allege Vote-Dilution Based on the Same Set of Facts.

Much of the legal analysis in *Sherman* applies here too. The NAACP Plaintiffs’ virtually identical allegations of racial discrimination are implausible. Plaintiffs cannot claim racial discrimination when the Legislature’s actions are entirely explainable by the “obvious alternative explanation” of politics. *Ashcroft v. Iqbal*, 556 U.S. 662, 682 (2009) (quotation marks omitted).

A. If districts are “readily explainable” by politics, Plaintiffs have not plausibly alleged discrimination.

1. *Sherman* already concluded that the 2026 Plan is “readily explainable by political motivations.” *Sherman* Op. at 5. That was dispositive in *Sherman*’s preliminary-injunction posture. It is also dispositive in this motion-to-dismiss posture. For the reasons advanced in Defendants’ motion to dismiss, dismissal is warranted because Plaintiffs’ complaint fails to “plausibly rebut” the “more straightforward explanation” for the mid-decade redraw: “naked partisanship.” *Lee*, 746 F. Supp. 3d at 504. When Plaintiffs’ own

allegations advert to “nondiscriminatory intent”—politics—there is no basis to draw Plaintiffs’ inference of unconstitutional discrimination. *Iqbal*, 556 U.S. at 682. The political explanation for districts was open and obvious. Dkt. 44 (“MTD”) at 6-9. And Plaintiffs’ allegations that the Legislature had to be “aware” of the racial effects of redistricting are not allegations that the Legislature was racially motivated. *Id.* at 9-12.

2. *Sherman* confirms Plaintiffs have not plausibly alleged unconstitutional racial purpose. *Sherman* dispatched with Plaintiffs’ various arguments against dismissal: that the State redistricted “[w]ithin days of” the Supreme Court’s *Callais* decision; that the redistricting took “less than 48 hours”; that the process “und[id] a longstanding state law banning late-decade redistricting” and otherwise “departed from normal legislative procedures and traditional districting criteria”; that the new congressional map pursued the “destructive end” of “crack[ing] Shelby County’s Black population across three elongated districts”; that legislators “implausibly feigned ignorance of Memphis’s racial demographics”; and that the Legislature, by relying on census data, necessarily “us[ed] exclusively racial demographic information ... to craft their desired maps.” *NAACP MTD Resp.* at 1. After *Sherman*, these allegations are not enough to state a plausible claim of unconstitutional vote dilution.

Start with *Callais*. *Sherman* concluded that redistricting after *Callais* “doesn’t show that the actions themselves were motivated by race or racial animus.” *Sherman Op.* at 9

n.4. Rather, redistricting after *Callais* shows that the Legislature now understood “it could avoid considering race” — “a far cry from using race to draw districts.” *Id.*

Sherman likewise rejected allegations about the quick timing of redistricting. *Contra NAACP MTD Resp.* at 1, 16. As the Court explained, “the short gap between the Supreme Court’s *Callais* decision and Tennessee’s primary elections” gave the State only “a brief window” to enact their desired map, *Sherman Op.* at 9, meaning the State could achieve its goal of “pass[ing] a map that favored Republicans” only by moving expeditiously, *id.* The same dynamic underscores why the Legislature’s decision to eliminate a “law banning late-decade redistricting” and recalibrate “traditional districting criteria” does not plausibly suggest racial animus. *Contra NAACP MTD Resp.* at 1. The quick timing simply confirms the State’s political goal. *See Sherman Op.* at 8.

Sherman likewise rejected theories that splitting the Memphis area into three congressional districts rebutted the obvious political explanation for the 2026 Plan. *Contra NAACP MTD Resp.* at 1 (contending “crack[ing] Shelby County’s Black population across three elongated districts” was evidence of a racial motivation). Plaintiffs’ own allegations say that those Memphis-area voters prefer Democratic candidates, FAC ¶¶150-55, making it hardly “surpris[ing] that the resulting map would also split the Black population of Memphis into thirds” to achieve a *political* goal, not to be confused with a racial one, *Sherman Op.* at 5. As in *Sherman*, Plaintiffs’ allegations about “the map’s effects aren’t enough because they’re ‘readily explained’ by Tennessee’s stated political

motivations and don't indicate a discriminatory purpose." *Id.* at 5; *see also id.* at 7 (because "the road to a reliably 9-0 map runs through Memphis," "political motivations readily explain" the need to divide Memphis between multiple districts); *id.* at 8-10 & n.5 (rejecting single legislator's statements about "safety" and other non-redistricting legislation); *accord Lee*, 746 F. Supp. 3d at 501 ("Complaint fail[ed] to allege ... invidious purpose or intent ... because of the obvious partisanship explanation for the maps.").

Sherman also rejected arguments faulting legislators' refusal to discuss racial demographics. When legislators decline to discuss race, that "isn't evidence of racial animus." *Sherman Op.* at 8 n.3. Contrary to Plaintiffs' arguments, FAC ¶¶104, 161-64, Plaintiffs cannot claim racial discrimination because the majority party refused the "minority party's legislators attempt to coerce the majority party into saying something about race." *Sherman Op.* at 8 n.3.

Sherman also rejected the remarkable theory that reliance on census data is tantamount to racial discrimination. *Contra NAACP MTD Resp.* at 12 (contending the Legislature must have used the census's racial data "either for its own sake or as a proxy for party affiliation"); FAC ¶160 (similar). *Sherman* observed that any "congressional map ... would use 2020 census data" and that use of such data does not suggest racial animus. *Sherman Op.* at 8. And as Defendants' motion to dismiss explained, Plaintiffs' assertions that the Legislature did not also rely on political data is implausible, contrary to

legislators' statements, and ignores the presumption of legislative good faith. *See* MTD at 16-17.

Sherman, moreover, rejected Plaintiffs' same *Arlington Heights*-type allegations. *See Sherman* Op. at 8-9; FAC ¶¶166-75, 179-87. As *Sherman* explained, "'official actions taken long ago'" are insufficient to show "'evidence of current intent.'" *Sherman* Op. at 9 (quoting *McCleskey v. Kemp*, 481 U.S. 279, 298 n.20 (1987)); *see also, e.g., Abbott v. Perez*, 585 U.S. 579, 603 (2018). For the same reasons, the NAACP Plaintiffs' references to Tennessee's historical links to the Ku Klux Klan and Confederacy fall flat. *See, e.g.,* FAC ¶¶176-77. *Sherman* rejected stray statements from legislators; whether in a preliminary injunction posture or in a motion to dismiss posture, "'statements and votes of a handful of legislators on unrelated topics do not plausibly suggest that the whole legislature passed the legislative maps to discriminate against racial minorities.'" *Sherman* Op. at 9 (quoting *Lee*, 746 F. Supp. 3d at 506). For the same reasons, the NAACP Plaintiffs' allegations about statements from "a 'handful' of legislators" to show discriminatory intent "do[es] not cross 'the line between possibility and plausibility.'" *Lee*, 746 F. Supp. 3d at 506; MTD at 18-20. And *Sherman* rejected allegations faulting legislative measures to improve services in Memphis and Shelby County, or one-off statements from past legislators. *Sherman* Op. at 8-10 & n.5; *contra* NAACP MTD Resp. at 14; *accord Lee*, 746 F. Supp. 3d at 505-06 (discounting similar arguments regarding "laws" and "bills" that have "little to do with redistricting").

All told, *Sherman* rejects Plaintiffs' same allegations of discrimination. They are "readily explainable" by politics. *Sherman* Op. at 5.

3. These same conclusions follow in this motion-to-dismiss posture. Plaintiffs' "well-pleaded factual allegations" still must "*plausibly* give rise to an entitlement to relief," *Iqbal*, 556 U.S. at 679 (emphasis added). Plaintiffs' bald assertions of discrimination are not owed any presumption of truth. *Id.* at 681. Nor are Plaintiffs' implausible allegations ignoring the presumption of good faith. *See Lee*, 746 F. Supp. 3d at 494, 504-06; MTD at 12-22. Just like *Lee*, even at the motion-to-dismiss stage, Plaintiffs fall short of plausibly alleging racial purpose "when the law is readily explainable on grounds apart from race." *Lee*, 746 F. Supp. 3d at 503. And where, as here, Plaintiffs' own allegations identify the "alternative explanation" for districts—politics—there is no basis for making Plaintiffs' inferential leap. *Iqbal*, 556 U.S. at 682; *see* MTD at 5-9.

B. *Sherman* refutes Plaintiffs' argument that they need not rule out the readily apparent political explanation for districts.

Like the *Sherman* Plaintiffs, the NAACP Plaintiffs insist they need not rebut the obvious alternative political explanation for districts. NAACP MTD Resp. at 11-12, 17-18. *Lee* already held Plaintiffs must do so to overcome a motion to dismiss. 746 F. Supp. 3d at 501. *Sherman* confirms these challenges to the 2026 Plan are no exception. *See Sherman* Op. at 10 n.6. As *Sherman* explains, Plaintiffs have the same obligation to "'rul[e] out the competing explanation that political considerations'" animated Tennessee's 2026 redistricting. *Id.* at 6-7 (observing that "it wouldn't make much sense" to require VRA §2

claimants to “‘rul[e] out the competing [political] explanation’” but not hold constitutional vote-dilution claimants to the same standard). While Plaintiffs need not offer an alternative map at the pleading stage, they must allege *something* that “plausibly ‘rule[s] out the possibility’ that the legislators acted for political—not racist—reasons.” *Lee*, 746 F. Supp. 3d at 504.¹ But here, like in *Sherman*, Plaintiffs have no allegations that the Legislature could “accomplish[] Tennessee’s political objectives” in a different way, *Sherman* Op. at 5—allegations necessary to rebut the obvious political explanation for the 2026 Plan, *Lee*, 746 F. Supp. 3d at 494 (explaining Plaintiffs could include an alternative map in pleadings, or allegations that a “map treated minority voters of one party worse than white voters of the *same* party” to undermine “partisan politics were to blame,” or allegations that legislators used race as a proxy or “considered race in an effort to comply with the Voting Rights Act”).

*

Plaintiffs’ complaint suffers the same “fatal flaw” as *Sherman*. *Sherman* Op. at 10 n.6. By failing to “trace [their] injury ... to race instead of partisan politics,” *id.*, they have

¹ *Sherman* faulted plaintiffs for failing to advance an alternative map as a means of disentangling politics from race. *Sherman* Op. at 5-7; accord *Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025) (faulting district court for granting preliminary injunction without an alternative map). Earlier, *Lee* held racial gerrymandering plaintiffs “need not” plead an alternative map, that there is more “flexibility” at the pleading stage, but plaintiffs must nevertheless plausibly “disentangle” race and politics. 746 F. Supp. 3d at 494. The Court can dismiss Plaintiffs’ complaint for all the foregoing reasons without requiring an alternative map of Plaintiffs.

failed to plausibly allege the State acted *because of* race—the very essence of a racial discrimination claim. *See Lee*, 746 F. Supp. 3d at 502. Plaintiffs’ complaint must be dismissed.

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Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

/s/ Zachary L. Barker

ZACHARY L. BARKER (BRP #035933)

Senior Assistant Attorney General

ANDREW DENNING (BPR #042208)

Assistant Attorney General

Office of the Tennessee Attorney General

P.O. Box 20207

Nashville, Tennessee 37202-0207

Phone: (615) 532-7400

Zachary.barker@ag.tn.gov

Andrew.denning@ag.tn.gov

(615) 532-4098

TAYLOR A.R. MEEHAN (admitted PHV)

BRYAN K. WEIR (admitted PHV)

THOMAS A. WILSON (admitted PHV)

SOREN GEIGER (admitted PHV)

Consovoy McCarthy PLLC

1600 Wilson Blvd., Suite 700

Arlington, VA 22209

taylor@consovoymccarthy.com

bryan@consovoymccarthy.com

twilson@consovoymccarthy.com

soren@consovoymccarthy.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that this supplemental brief was filed electronically on August 24, 2026. A true and correct copy of that filing was forwarded via the Court's CM/ECF system and/or U.S. Mail postage prepaid upon the following:

Van Davis Turner, Jr.
Turner Feild, PLLC
2650 Thousand Oaks Boulevard
Ste 2325
Memphis, TN 38118
901-290-6610
Fax: 901-290-6611
Email: vturner@turnerfeildlaw.com

/s/ Zachary L. Barker
ZACHARY L. BARKER
Senior Assistant Attorney General